

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2204/A45 120-348
I hereby certify that this correspondence is being submitted to the USPTO by Web-EFS on <u>November 16, 2006</u> Signature <u>/David Dagg/</u> Typed or printed name <u>David Dagg</u>	Application Number 09/660110	Filed 9/12/2000 First Named Inventor Hardjono et al. Art Unit 2145 Examiner Azizul Q. Choudhury
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p style="margin-top: 20px;">This request is being filed with a notice of appeal.</p> <p style="margin-top: 20px;">The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p style="margin-top: 20px;">I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37809</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____ </div> <div style="width: 35%; text-align: right;"> <u>/David Dagg/</u> Signature <u>David Dagg</u> Typed or printed name <u>978-264-4001</u> Telephone number <u>November 16, 2006</u> Date </div> </div> <p style="font-size: small; margin-top: 10px;">NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		
<input type="checkbox"/> *Total of _____ forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Hardjono

Application No.: 09/660,110

Filed: 09/12/2000

Title: System, Device and Method for Receiver
Access Control in a Multicast Communication Network

Attorney Docket No.: 2204/A45 120-348

Nortel Ref: 12084BAUS01U

Group Art Unit: 2145

Examiner: Choudhury

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Pre-Appeal Brief Request for Review

Dear Sir:

Applicants hereby request a Pre-Appeal Brief review of the above identified patent application. Applicants file this Request for a Pre-Appeal Brief review so that the panel of Examiners may determine whether the Office Actions of record adequately establish that claims 1-4 and 6-15, and 17-57 are anticipated under 35 U.S.C. 102(b) by United States Patent number 6,097,720 of Araujo et al. ("Araujo et al."). Applicants submit the Examiner has failed to carry the burden of showing that each and every limitation of the independent claims is taught by Araujo et al., such that there is a clear legal and factual deficiency in the rejection, as shown below:

1. The Examiner has failed to provide a reference or combination of references that describes or suggests the claim limitation of *joining a multicast group by an access device on behalf of a subscriber device, wherein the joining includes authenticating*

the access device by the multicast distribution device, and wherein the multicast distribution device does not authenticate the subscriber device, because Araujo et al. includes no mention of authentication of any kind, and also because the PPP connections of Araujo et al. cited by the Examiner are between **both** a multicast source end station and the receiving end stations, **and also** between the multicast source end station and an intermediate device (which is located between the multicast source end station and the receiving end stations).

It is well established that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). In the present case, claims 1-4 and 6-15, and 17-57 are currently pending. Claims 1, 4, 15, 28 and 42 are independent. At issue is whether the Araujo et al. reference teaches the selective authentication approach of the present independent claims, in which an access device joins a multicast group on behalf of a subscriber device, wherein the joining includes authenticating the access device by a multicast distribution device, and wherein the multicast distribution device does not authenticate the subscriber device. First, as noted in previous responses, Araujo et al. includes no mention of authentication of any kind. There is no discussion of any need for authentication, or even any suggestion that authentication could potentially be performed, in the teachings of Araujo et al. Accordingly, Araujo et al. therefore also fails to recognize any need for eliminating authentication steps performed between devices, in order to save bandwidth and other resources. In contrast, the selective authentication features of the present independent claims involve joining a multicast group on behalf of a subscriber device including

authentication of a multicast distribution device, but advantageously *without* authentication of the subscriber device. Applicants submit that without any teachings regarding authentication in Araujo et al., and since the connections taught by Araujo et al. extend between both the multicast source end station and the receiving end stations of Araujo et al., and also between the multicast source end station and the intermediate device of Araujo et al., Araujo et al. does not anticipate the present independent claims.

Specifically, the Examiner has asserted that the use of PPP in the connections of Araujo et al. is sufficient in itself to anticipate the above described selective authentication features of the present independent claims. However, the Examiner's rejections include no indication of whether the Examiner views the approach to authentication taken in the present independent claims as inherent or implicit in Araujo et al., or that any portion of Araujo et al. even suggests that optional authentication features of PPP should somehow be employed in the Araujo et al. system. In this regard the Examiner has simply stated that "PPP connections feature authentication if desired".

While Applicants concur that authentication is an *optional* feature that may be employed in PPP, there is no teaching in Araujo et al. towards the use of authentication in the PPP connections disclosed in Araujo et al., far less any hint or suggestion of any possible selective application of authentication to certain PPP connections and not others. Applicants specifically note that even where Araujo et al. discusses in some detail the features and operation of PPP (i.e. between line 62 of column 4 and column 5 line 27), Araujo et al. makes no reference to using the authentication capabilities of PPP connections within the Araujo et al. system. Accordingly, a person skilled in the art could not be instructed by the teachings of Araujo et al. that the use of

PPP's authentication features was in any way a desirable enhancement or modification to the connections taught therein.

Moreover, even if the optional authentication features of PPP were to be applied to the connections in Araujo et al., and Applicants make no admission that there is any motivation found in the prior art for such a modification of Araujo et al., there is still no reason that such authentication would be applied in the exact manner of the above highlighted features of the present claims. Specifically, there is nothing outside of the present independent claims, either in Araujo et al. or elsewhere (including in RFC 1661), that suggests the selective approach to authentication in response to a join request found in the present independent claims.

The Examiner's statements point only to the possibility of modifying Araujo et al. to match the present independent claims, without identifying any teaching in the prior art that discloses any hint or suggestion of the desirability of such modifications. The Examiner states that "no authentication need occur between the end stations (subscriber devices) and the intermediate device (access device)". Applicants respectfully urge that the fact that a prior art reference *could potentially be modified* in a way that matches a claim is not a proper basis for rejecting that claim. Moreover, the Examiner's assertions that Araujo et al. could be modified in the manner of the present independent claims is made with the benefit of knowledge of the present independent claims themselves, but without any support in the teachings of the prior art. Applicants must accordingly respectfully urge that the present rejections based on this logic are founded on impermissible hindsight.

For these reasons, Applicants respectfully request that the above identified application be reviewed by the pre-appeal panel. Applicants respectfully urge that there is a clear legal and/or factual deficiency in the Examiner's anticipation rejections of the present claims, and Applicants accordingly respectfully request withdrawal of the rejections and allowance of the pending claims.

Respectfully Submitted,

November 16, 2006
Date

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